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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR KING COUNTY

9 CITY OF SEATTLE, A Washington municipal)
corporation,)

10 Plaintiff,)

11 vs.)

12 SEATTLE CITIZENS AGAINST THE)
TUNNEL; ELIZABETH A. CAMPBELL, in)
13 her capacity as Seattle Citizens Against the)
Tunnel's Campaign Manager and the principal)
14 initiative petitioner; WASHINGTON STATE)
DEPARTMENT OF TRANSPORTATION,)

15 Defendants.)
16)
17)

No. 11-2-13620-5SEA

COMPLAINT FOR
DECLARATORY JUDGMENT

18 I. INTRODUCTION

19 1. The City of Seattle seeks a declaration that proposed Seattle Initiative No. 101 (I-101),
20 which seeks a vote to prohibit the construction, operation, or use of City of Seattle right-of-
21 way(s) or City-owned property for a tunnel replacing that portion of SR 99 commonly known as
22 the Alaskan Way Viaduct, is beyond the scope of the initiative power. The substantive portion of
23 the initiative provides that:

1 Section 2. A new Section 15.55 of the Seattle Municipal Code is added to read as
2 follows:

3 The construction, operation or use of any City right-of-way or City-owned
4 property wherever situated for a tunnel for vehicular traffic, or tunnel-related
5 facility, to replace in whole or in part the Alaskan Way Viaduct is hereby
6 prohibited.

7 Section 3. All ordinances and/or parts of ordinances in conflict with the
8 provisions of this measure are hereby repealed.

9 The Alaskan Way Viaduct is a part of a state highway, State Route 99. RCW 47.17.160. The
10 replacement of the Alaskan Way Viaduct is a State project. See RCW 47.01.402. The proposed
11 initiative impacts this project.

12 2. The legal issue presented is whether proposed I-101 is precluded because the subject of
13 the initiative (the power to allow the State to use City of Seattle right-of-way or City-owned
14 property in the construction or operation of a tunnel replacing the Alaskan Way Viaduct) is directly
15 delegated to the City of Seattle's governing body. If so, I-101 is beyond the scope of the initiative
16 power.

17 3. The City of Seattle seeks resolution of this legal issue in accordance with the
18 Washington Supreme Court's ruling in *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389
19 (1996). That case held that the proper method for a governmental official to resolve whether a
20 proposed ballot measure is beyond the scope of the initiative or referendum power is to seek a
21 judicial determination before the matter is placed on a ballot.

22 II. PARTIES

23 4. Plaintiff the City of Seattle ("the City") is a municipal corporation validly formed and
existing under the Constitution and laws of the State of Washington. It is a first-class charter city
located in King County, Washington.

1 5. Defendant Seattle Citizens Against the Tunnel is a political campaign committee
2 registered with the City of Seattle Ethics and Elections Commission and is a principal proponent
3 of proposed I-101. This Committee has its principal place of business in the City of Seattle.

4 6. On information and belief, Defendant Elizabeth A. Campbell is a citizen of the United
5 States and a resident and registered voter of Seattle, in King County, Washington. Defendant
6 Campbell is the Campaign Manager of Seattle Citizens Against the Tunnel and is the principal
7 petitioner who filed proposed I-101 with the Seattle City Clerk.

8 7. The Washington State Department of Transportation ("the State") is an agency of the
9 State of Washington and is the project manager for the Alaskan Way Viaduct replacement
10 project.

11 **III. JURISDICTION AND VENUE**

12 8. This Court has subject matter jurisdiction by virtue of RCW 2.08.010 and RCW
13 7.24.010.

14 9. Jurisdiction and venue are proper by virtue of RCW 4.12.025(1), which provides for
15 suits to be brought in the county in which a defendant resides, or has its principal place of
16 business.

17 **IV. FACTS**

18 10. The legislature has declared that:

19 The legislature finds that the replacement of the vulnerable state route number 99
20 Alaskan Way viaduct is a matter of urgency for the safety of Washington's
21 traveling public and the needs of the transportation system in central Puget Sound.
22 The state route number 99 Alaskan Way viaduct is susceptible to damage, closure,
or catastrophic failure from earthquakes and tsunamis. Additionally, the viaduct
serves as a vital route for freight and passenger vehicles through downtown
Seattle.

23 RCW 47.01.402.

1 11. The Alaskan Way Viaduct is a part of a state highway, State Route 99. RCW
2 47.17.160. The replacement of the Alaskan Way Viaduct is a State project. *See* RCW 47.01.402.
3 The proposed initiative impacts this project.

4 12. On February 1, 2011, Defendants Seattle Citizens Against the Tunnel and Elizabeth
5 A. Campbell (collectively "the Petitioners") submitted a proposed initiative measure, later
6 designated as proposed I-101, to the City of Seattle Clerk's Office. The total number of
7 signatures filed was 28,019. Proposed I-101 seeks to prohibit the construction, operation, or use
8 of City of Seattle right-of-way(s) or City-owned property for the construction and/or operation of
9 a tunnel replacing the Alaskan Way Viaduct.

10 13. On February 3, 2011, the City Clerk's Office fulfilled its ministerial duties, pursuant
11 to Article IV § 1(J) of the Seattle City Charter, by date and time stamping the proposed petition,
12 assigning the initiative a Clerk's File number and initiative number, and transmitting the petition
13 signatures to King County Elections for the signature validation process.

14 14. Of the 28,019 signatures filed, King County validated 19,450 signatures and the
15 remaining 8,569 were challenged. On March 18, 2011, King County Elections Director Sherril
16 Huff notified the City Clerk that I-101 failed to meet the required number of valid signatures.

17 15. On March 21, 2011, the City Clerk notified Petitioners of proposed I-101's
18 insufficiency, and a new deadline for gathering additional signatures was set for April 10, 2011,
19 pursuant to Clerk Rule No. 00-01.

20 16. On April 7, 2011, Petitioners submitted an additional 3,278 petition signatures to the
21 City of Seattle Clerk's Office.
22
23

1 17. The City Clerk's Office fulfilled its ministerial duties, pursuant to Article IV § 1(J)
2 of the Seattle City Charter, by date and time stamping the signature submittal receipt and
3 transmitting the petition signatures to King County Elections on April 8, 2011 for the signature
4 validation process.

5 18. On April 11, 2011, King County Elections emailed a final report indicating that there were
6 sufficient valid signatures and later communicated that the petitions would be returned to the
7 City with a letter certifying that there were sufficient valid signatures.

8 **V. CAUSE OF ACTION – DECLARATORY JUDGMENT:**

9 **PROPOSED I-101 IS BEYOND THE SCOPE OF THE LOCAL INITIATIVE POWER**
10 **BECAUSE IT SEEKS TO EXERCISE A POWER THAT WAS DIRECTLY**
11 **DELAGATED TO THE CITY OF SEATTLE'S GOVERNING BODY.**

12 19. Plaintiff re-alleges the allegations set forth in paragraphs 1 through 18 above.

13 20. Where the state legislature has delegated the legislative power exercised by an initiative
14 directly to the governing body and not to the people, the initiative is beyond the scope of the local
15 initiative power.

16 21. State law provides that the governing body of a city is authorized to directly lease, sell,
17 or convey by gift to the State of Washington any land necessary for a state highway. RCW
18 47.12.040. Proposed I-101 impedes this State-delegated authority by prohibiting the use of City
19 right-of-way or property for a tunnel or tunnel-related facility to replace the Alaskan Way
20 Viaduct. Proposed I-101 is therefore beyond the scope of Seattle's initiative power, because
21 State law specifically delegates the power to make agreements with the State concerning use and
22 transfer of property needed for state highways to the City of Seattle's governing body.

23 22. Additionally, RCW 47.28.140 provides that "when in the opinion of the governing
authorities representing the [Washington State Highway] department and any . . . municipal

1 corporation . . . , any highway, road, or street will be benefited by constructing, reconstructing, . . .
2 improving or maintaining, . . . and it is in the public interest to so, the authorities may enter into
3 cooperative agreements wherein either agrees to perform work and furnish the materials necessary
4 and pay the costs thereof, . . . , which costs and expenses shall be reimbursed by the party whose
5 responsibility it was to perform the work in the first instance. Because proposed I-101 restricts the
6 ability of the City of Seattle's Governing body to enter into these cooperative agreements, it is
7 beyond the scope of the initiative power and in conflict with state law.

8 23. A controversy exists between Plaintiff and some or all Defendants regarding whether
9 proposed I-101 is within the scope of the initiative power. Adjudication of this controversy by
10 this Court would definitively resolve the controversy.

11 VI. PRAYER FOR RELIEF

12 WHEREFORE, Plaintiff prays that the court:

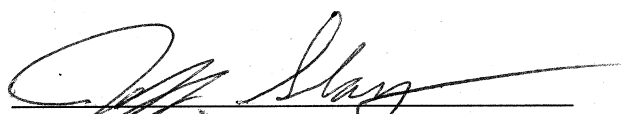
13 1. Declare that proposed I-101 may not be placed upon the ballot because it is beyond the
14 scope of the local initiative power.

15 2. Award such other relief as the court deems just and proper.

16 DATED this 13th day of April, 2011.

17 PETER S. HOLMES
18 Seattle City Attorney

19 By:



20 John B. Schochet, WSBA No. 35869

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